

**FEDERAL ELECTION COMMISSION**  
999 E Street, N.W.  
Washington, D.C. 20463

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**FIRST GENERAL COUNSEL'S REPORT**

RAD REFERRAL: 99L-14  
DATE ACTIVATED: 5/31/00

**SENSITIVE**

EXPIRATION OF STATUTE OF  
LIMITATIONS: 8/24/03  
STAFF MEMBER: DAVID H.  
MORGENSTERN

SOURCE: INTERNALLY GENERATED

RESPONDENTS: Ferraro for Senate '98  
Addie Guttag, as treasurer  
Geraldine Ferraro

RELEVANT STATUTES: 2 U.S.C. § 441b(a)  
2 U.S.C. § 434(b)

INTERNAL REPORTS CHECKED: Disclosure Reports  
Referral Materials

FEDERAL AGENCIES CHECKED: None

**I. GENERATION OF MATTER**

This matter was generated based on information ascertained by the Federal Election Commission (the "Commission") in the normal course of carrying out its supervisory responsibilities. *See* 2 U.S.C. § 437g(a)(2). The Reports Analysis Division ("RAD") referred Ferraro for Senate '98 and Addie Guttag, as treasurer, to the Office of General Counsel on September 30, 1999. The basis of the RAD referral is the Committee's acceptance of loans received from Smith Barney and secured with stocks owned by the candidate.

## II. FACTUAL AND LEGAL ANALYSIS

### A. Background

The Ferraro for Senate '98 committee (the "Committee") is a political committee that is an authorized committee for Geraldine Ferraro, candidate for U.S. Senate in New York in 1998. Ferraro lost the primary election held on September 15, 1998, receiving twenty-five point nine percent (25.9%) to the winner's fifty point six percent (50.6%). Addie Guttag is the treasurer of the Committee. During the 1997-98 cycle, the Committee's net contributions totaled \$2,343,422.53 and its net expenditures totaled \$2,740,505.22. According to its 1999 Year-End Report, the Committee had \$7,588.99 cash on hand and \$526,642 in debts and obligations (including \$402,100 in loans from the candidate).

### B. Applicable Law

The Federal Election Campaign Act of 1971, as amended (the "Act"), provides that corporations are prohibited from making any contribution or expenditure in connection with federal elections. 2 U.S.C. § 441b. The Act also makes it unlawful for any political committee or federal candidate to receive such a contribution. *Id.* The term "contribution" includes any loan made by any person for the purpose of influencing any election for federal office. 2 U.S.C. § 431(8)(A)(i).

The Act contemplates loans to a political committee as receipts which must be reported pursuant to Section 434(b); accordingly, a political committee must report the source of each loan. 2 U.S.C. 434(b)(3)(E). *See also* 11 C.F.R. § 104.3(a)(4)(iv). While all loans to a political committee must be reported pursuant to Section 434(b), some loans are exempted from the definition of a contribution. Specifically, a loan of money from a State bank, a federally

chartered depository institution, or a depository institution whose deposits are insured by the Federal Deposit Insurance Corporation (FDIC), the Federal Savings and Loan Insurance Corporation (FSLIC), or the National Credit Union Administration (NCUA) is not a contribution by the lending institution if such loan is made in accordance with applicable banking laws and regulations and is made in the ordinary course of business. 2 U.S.C. § 431(8)(B)(vii). *See also* 11 C.F.R. § 100.7(11).

A brokerage firm is not a State bank, a federally chartered depository institution, or a depository institution whose deposits are insured by the FDIC, the FSLIC, or the NCUA. Consequently, a loan to an authorized committee from an incorporated brokerage firm would constitute a prohibited corporate contribution.

### **C. Analysis**

#### **1. Loans from Brokerage Firm**

The Committee accepted two contributions from Smith Barney totaling \$350,000. These contributions were in the form of loans received from Smith Barney (the "Smith Barney Loans") which were secured by stocks owned by Ferraro.<sup>1</sup> Schedules A and C of the Committee's 1998 12 Day Pre-Primary Report disclosed the receipt of a \$300,000 loan from the candidate on August 24, 1998. Schedules A and C of the Committee's 1998 October Quarterly Report

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<sup>1</sup> The Commission previously addressed this issue in MURs 4830 and 4845, which involved \$80,000 in loans to the Udall for Us All Committee from candidate Tom Udall's brokerage account. The matter was complaint-generated, but this Office raised the issue of the brokerage loans. On July 20, 1999, the Commission voted 2-4 against this Office's recommendation of a finding that there was reason to believe the brokerage loans violated Section 441b. However, the Commission did not vote that there was no reason to believe that the brokerage loans were prohibited by the Act. The matter currently under review was referred to this Office

Consequently, the issue of whether brokerage loans constitute prohibited corporate contributions is likely to arise in the future as brokerage accounts become increasingly prevalent.

disclosed the receipt of a \$50,000 loan from the candidate on September 8, 1998. No source of funds was reported as to either loan.

On October 20, 1998, a Request for Additional Information was sent to the Committee asking the Committee to clarify the source of the \$300,000 loan. In her response dated November 12, 1998, the Committee's treasurer, Addie Gutttag, stated that both the \$300,000 loan and the \$50,000 loan were from "funds borrowed by the candidate from Smith Barney at 8 ½% interest, using personally owned stocks which were managed by Smith Barney, as collateral."

In a letter to the Commission dated May 26, 1999, Ferraro stated that (1) she had sold 16,260 shares of stock in order to repay the Smith Barney Loans, and (2) the Smith Barney Loans had been repaid on May 20, 1999. On May 25, 1999, a RFAI was sent to the Committee stating that a loan from a brokerage firm is a prohibited contribution. In her response dated June 7, 1999, Ferraro disagreed with the Commission's characterization of the Smith Barney Loans; rather, she asserted that the funds in question were personal loans from her to the Committee which were secured by stock in her brokerage account. In addition, Ferraro noted that her personal loan would continue to be carried by the Committee until it was either repaid or the Committee was terminated.

Smith Barney is not a State bank, a federally chartered depository institution, or a depository institution whose deposits are insured by the FDIC, the FSLIC, or the NCUA; consequently, a loan from Smith Barney constitutes a contribution. *See* 2 U.S.C.

§ 431(8)(B)(vii). Because Smith Barney is a corporation, the Committee's receipt of the Smith Barney Loans constitutes acceptance of corporate contributions which are prohibited under the terms of the Act. *See* 2 U.S.C. § 441b(a). In addition, the Smith Barney Loans were requested

by the candidate and secured by stock in her brokerage account; thus Ferraro was personally involved in the transactions that gave rise to the violations in question. Therefore, there is reason to believe that Ferraro for Senate '98, Addie Guttag, as treasurer, and Geraldine Ferraro violated 2 U.S.C. § 441b(a).

Nothing in the evidence suggests that Smith Barney knew or should have known that Ferraro was taking loans against her brokerage account to finance her candidacy for federal office. Moreover, it should be noted that brokerage margin accounts are set up such that an account holder is able to borrow amounts up to predetermined limits without case-by-case approval. Consequently, consistent with this Office's recommendation as to Merrill Lynch in MURs 4830 and 4835 concerning brokerage loans to the Udall for Us All Committee, this Office makes no recommendation with respect to Smith Barney. *See* First General Counsel's Report, MURs 4830 & 4845, at 15.

## **2. Failure to Report Source of Brokerage Loans**

The Committee and Guttag, as treasurer, also failed to disclose the source of (1) the \$300,000 loan in the 12 Day Pre-Primary Report, and (2) the \$50,000 loan in the 1998 October Quarterly Report. *See* 2 U.S.C. § 434(b)(3)(E); 11 C.F.R. § 104.3(a)(4)(iv). By letter dated November 12, 1998, the Committee effectively amended both reports by disclosing Smith Barney as the source of the loans. The Commission received the Committee's letter 74 days after the deadline for the 12 Day Pre-Primary Report and 35 days after the deadline for the 1998 October Quarterly Report.

Therefore, there is reason to believe that Ferraro for Senate '98 and Addie Guttag, as treasurer, violated 2 U.S.C. § 434(b)(3)(E).

**III. DISCUSSION OF CONCILIATION AND CIVIL PENALTY**


This Office recommends that the Commission enter into a conciliation with the Respondents prior to a finding of probable cause to believe. Attached for the Commission's approval is a proposed conciliation agreement (Attachment 2)

**IV. RECOMMENDATIONS**

1. Open a MUR.
2. Find reason to believe that Ferraro for Senate '98, Addie Guttag, as treasurer, and Geraldine Ferraro violated 2 U.S.C. § 441b(a).
3. Find reason to believe that Ferraro for Senate '98 and Addie Guttag, as treasurer, violated 2 U.S.C. § 434(b)(3)(E).
4. Enter into conciliation prior to a finding of probable cause to believe.
5. Approve the attached conciliation agreement and appropriate letters.

Lawrence M. Noble  
General Counsel

7/17/00  
Date

BY:   
Lois G. Lerner  
Associate General Counsel

Attachment:

1. Factual and Legal Analysis
2. Proposed agreement



**FEDERAL ELECTION COMMISSION**  
Washington, DC 20463

**MEMORANDUM**

**TO:** Office of the Commission Secretary

**FROM:** Office of General Counsel *RCS*

**DATE:** July 18, 2000

**SUBJECT:** 99L-14-First General Counsel's Report

The attached is submitted as an Agenda document for the Commission Meeting of \_\_\_\_\_

Open Session \_\_\_\_\_

Closed Session \_\_\_\_\_

**CIRCULATIONS**

**SENSITIVE** ☒  
**NON-SENSITIVE** ☐

72 Hour TALLY VOTE ☒

24 Hour TALLY VOTE ☐

24 Hour NO OBJECTION ☐

INFORMATION ☐

**DISTRIBUTION**

**COMPLIANCE** ☒

Open/Closed Letters ☐

MUR ☐

DSP ☐

**STATUS SHEETS** ☐

Enforcement ☐

Litigation ☐

PFESP ☐

**RATING SHEETS** ☐

**AUDIT MATTERS** ☐

**LITIGATION** ☐

**ADVISORY OPINIONS** ☐

**REGULATIONS** ☐


**OTHER** ☐



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

MEMORANDUM

TO: Lawrence M. Noble  
General Counsel

FROM: Mary W. Dove/Lisa R. Davis  
Acting Commission Secretary 

DATE: July 21, 2000

SUBJECT: RAD Referral #99L-14 - First General Counsel's Report  
dated July 17, 2000.

The above-captioned document was circulated to the Commission  
on Tuesday, July 18, 2000

Objection(s) have been received from the Commissioner(s) as  
indicated by the name(s) checked below:

Commissioner Mason	<u>XXX</u>
Commissioner McDonald	<u>XXX</u>
Commissioner Sandstrom	—
Commissioner Smith	<u>XXX</u>
Commissioner Thomas	<u>XXX</u>
Commissioner Wold	<u>XXX</u>

This matter will be placed on the meeting agenda for  
Tuesday, July 25, 2000.

Please notify us who will represent your Division before the Commission on this  
matter.